



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,369	04/12/2004	Michael J. McMahon	769-333 Div.	3082
29540	7590	06/28/2006	EXAMINER	
PITNEY HARDIN LLP			SIPOS, JOHN	
7 TIMES SQUARE			ART UNIT	
NEW YORK, NY 10036-7311			PAPER NUMBER	

3721

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,369

Applicant(s)

MCMAHON ET AL.

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-46 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 34-46 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

Applicant's arguments have been considered but are not persuasive and therefore the rejections made in the last Office action are repeated.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

DOUBLE PATENTING

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 34-46 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 34-42 of copending Application No. 10/208494 in view of Herber(5,519,982). The claims of the copending application set forth a method of manufacturing reclosable bags comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper between the folded sides of the film web, sealing the zipper to the opposing sides of the web and cross sealing the web and zipper to form bags. This process lacks the specific position of the zipper adjacent the fold of the film web.

The patent to Herber shows a method of manufacturing reclosable bags in Figures 8-26 comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper 208 into the fold, sealing the zipper to the opposing sides of the web adjacent the fold at 255, cross sealing the web and zipper to form bags with a bottom fold and an opposite open end, filling the bags through the open end at 305 and sealing the open mouth of the bags at 310. The placement of the zipper in the fold provides protection to the zipper by the fold.

It would have been obvious to one skilled in the art to place the zipper set forth in the claims of the copending application adjacent the fold as taught by Herber to provide a protection to the zipper. Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims to be obvious variants of the claims of the copending application. While the claims of the two applications may vary in scope and terminology, the variations and difference would have been obvious to one having ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 34-46 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent Herber (5,519,982) in view of Gilbert (UK Patent Application 2,085,519) or alternatively over Gilbert in view of Herber.

The patent to Herber shows a method of manufacturing reclosable bags in Figures 8-26 comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper 208 into the fold, sealing the zipper to the opposing sides of the web adjacent the fold at 255, cross

sealing the web and zipper to form bags with a bottom fold and an opposite open end, filling the bags through the open end at 305 and sealing the open mouth of the bags at 310. The placement of the zipper in the fold provides protection to the zipper by the fold. The process set forth by Herber differs from the claimed process in that Herber does not use sliders on the zippers.

The Gilbert reference teaches a process for applying sliders to zippers comprising of feeding zippers comprising of profiles 2 and flanges 1, feeding spaced sliders 3 by feeding turret 9 having a plurality of slider holding recesses 10, applying the sliders at spaced locations on to the zippers. The slider-carrying fastener segments are then attached to a film web. This operation results in a faster and more efficient operation as discussed on page 1, lines 16-38 of Gilbert. The process set forth by Gilbert differs from the claimed process in that it does not discuss the bag forming process.

It would have been obvious to one skilled in the art to use zippers with sliders in the Herber process as taught by Gilbert, i.e. feed zippers carrying sliders into the folded web, to provide for a bag with an easy opening/closing mechanism.

Alternatively, it would have been obvious to one skilled in the art to complete the bag forming process of Gilbert by the process set forth in the Herber patent, i.e. folding the web, feeding the slider carrying zipper into the fold and sealing the zipper to the film's opposing walls.

In both of the above operations first portions of the zippers of Gilbert, i.e. flanges 1, would be sealed to the opposing walls of the film while a second portion, i.e. portions closer to the slider as well portions encompassed by the slider would be free of sealing to the opposing walls.

Regarding the claims reciting the line weakness (claims 35-37), Herber shows a line of weakness 254 in Figure 18 between the fold and the seals of the zipper and the film.

The simultaneous folding and weakness forming operation of claim 34 and the stomping of zippers of claim 46 are well known in the art and performing these steps in the Herber or Gilbert methods for their inherent advantages would have been obvious to one skilled in the art.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments have been considered but are not persuasive. Applicant argues that the flange of the Herber zipper is fully sealed to the film material. As Applicant states, in order for a slider to properly operate relative movement between the slider and the zipper must be permitted. This can only be accomplished by partial sealing a zipper flange to the film. Although Gilbert does not specifically disclose the manner of sealing the zipper to the film since this occurs in a subsequent operation it could only be partially sealed to the bag film to permit the movement of the slider relative the zipper/film. Therefore, the sealing of the Gilbert zipper would have to take place by only partially sealing the flanges 1 to the film while leaving other portions adjacent the slider free of sealing to the film. If the flange 1 of Gilbert was fully sealed to the film the slider and zipper of Gilbert would be inoperative.

Also, note that the sealing of only some portions of the zipper to the film is a necessity in the slider carrying zippers regardless of the type of zipper or slider since the sliders need to move relative to the film. This concept is further shown in the cited references to Thomas (5,713,669), Ferrell (4,241,865) and Sullivan (4,620,320).

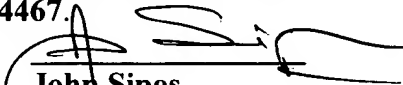
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.


John Sipos
Primary Examiner